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and Harry Harrison*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HAZEL WALSH,

Plaintiff,

v.

KINDRED HEALTHCARE, INC., et al.,

Defendants.

Case No. 3:11-cv-00050-JSW

**STIPULATION AND [PROPOSED]
ORDER LIFTING STAY ON ALTER
EGO DISCOVERY AND
JURISDICTIONAL CHALLENGES
UNDER FRCP 12(b)(2)**

The Honorable Jeffrey S. White

WHEREAS on or about November 14, 2011, the parties entered a stipulation regarding litigation concerning personal jurisdiction and alter ego discovery. In particular, the parties agreed that Defendants would not move to dismiss Plaintiffs' Second Amended Complaint based upon insufficiency of Plaintiffs' alter ego allegations as to 1) the vertical alter ego relationships

1 between the Facility Defendants¹, Subsidiary Licensee Defendants², and the Parent Kindred
 2 Defendants³, or 2) the horizontal alter ego relationships between the Facility Defendants, and
 3 further agreed that if any Defendant or Defendants move to dismiss Plaintiffs' Second Amended
 4 Complaint based upon lack of personal jurisdiction, litigation related to the Defendants' challenge
 5 to personal jurisdiction would be stayed until further notice⁴;

6 **WHEREAS** Defendants Fifth Avenue Health Care, Care Center of Rossmoor, L.L.C. fka
 7 Guardian of Rossmoor, Bay View Nursing and Rehabilitation Center, Hacienda Care Center,
 8 Valley Gardens Healthcare and Rehabilitation Center, Kindred Healthcare Center of Orange,
 9 Canyonwood Nursing and Rehab Center, Santa Cruz Healthcare Center, Alta Vista Healthcare &
 10 Wellness Centre aka Alta Vista Healthcare, and Smith Ranch Care Center filed a motion to
 11 dismiss the CLRA claim in Plaintiffs' Third Amended Complaint pursuant to Rule 12(b)(6) of the
 12 Federal Rules of Civil Procedure, and Defendant Kindred Healthcare, Inc. filed a motion to
 13 dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2);

14 **WHEREAS** the parties agreed to extend their stipulation regarding personal jurisdiction
 15 challenges and alter ego discovery to avoid litigation over these issues prior to the Court's
 16 decision on Defendants' Motion to Dismiss pursuant to Rule 12(b)(6);

17 **WHEREAS** on August 6, 2012, the Court denied Defendants' Motions to Dismiss
 18 Plaintiffs' Third Amended Complaint, *see* Order Denying Defendants' Motion to Dismiss Third
 19

20 ¹ The thirteen "Facility Defendants" are: Alta Vista Healthcare & Wellness Centre (a/k/a Alta
 21 Vista Healthcare); Bay View Nursing And Rehabilitation Center; Canyonwood Nursing and
 22 Rehab Center; Care Center of Rossmoor (f/k/a Guardian of Rossmoor); Fifth Avenue Health Care
 23 Center; Golden Gate Healthcare Center; Hacienda Care Center; Nineteenth Avenue Healthcare
 24 Center; Kindred Healthcare Center of Orange; Santa Cruz Healthcare Center; Smith Ranch Care
 25 Center (f/k/a Guardian at Smith Ranch Care Center); Valley Gardens Healthcare & Rehabilitation
 26 Center; and Victorian Healthcare Center (f/k/a Hillhaven Victorian).

24 ² The three "Subsidiary Licensee Defendants" are: Care Center of Rossmoor, LLC; Smith
 25 Ranch Care Center, LLC; and Hillhaven-MSO Partnership.

26 ³ The four "Kindred Defendants" are: Kindred Healthcare, Inc. ("Kindred Inc."); Kindred
 27 Healthcare Operating, Inc. ("KHOF"); Kindred Nursing Centers West, LLC ("Kindred West");
 28 and California Nursing Centers, LLC ("California Nursing").

⁴ The stipulation regarding litigation related to personal jurisdiction and alter ego issues
 applied equally to any subsequent complaint filed in this action.

Amended Complaint (Dkt. 105), at 5;

WHEREAS Defendants now wish to lift the stay on all briefing and discovery related to Defendant Kindred Healthcare, Inc.'s motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2);

WHEREAS Plaintiffs acknowledge that Defendants have provided adequate notice of their intention to lift the stay;

NOW THEREFORE, it is stipulated that:

1. The stay on all briefing and discovery related to Defendant Kindred Healthcare, Inc.'s motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) is lifted;

2. Plaintiffs will have ninety (90) days to conduct jurisdictional discovery, including on alter ego issues, before filing their opposition brief. This agreement is without prejudice to Defendants' ability to challenge the scope of such discovery, including the alter ego discovery previously propounded by Plaintiffs;

3. Nothing in this stipulation will prevent Defendants from challenging Plaintiffs' vertical or horizontal alter ego theories through motion for summary judgment, opposition to class certification or other motion that does not merely challenge the legal sufficiency of the allegations in Plaintiffs' Third Amended Complaint or any subsequent complaint;

4. Defendant Kindred Healthcare, Inc.'s motion to dismiss for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure is set to be heard on January 18, 2013 at 9:00 a.m. Plaintiffs' opposition brief will be due on December 6, 2012. Defendants' reply brief will be due on December 20, 2012.

1 Dated: September 10, 2012

Respectfully submitted,

2 MANATT, PHELPS & PHILLIPS

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4 By: /s/ Brad W. Seiling
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10 Dated: September 10, 2012

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18 Dated: September 10, 2012

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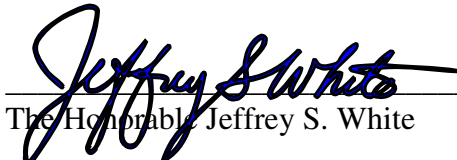
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22 *HARRY HARRISON*

23 **Filer's Attestation:** Pursuant to General Order No. 45, Section X(B) regarding signatures, Brad
24 W. Seiling hereby attests that concurrence in the filing of this document has been obtained.

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 Dated: September 12, 2012

27 
28 The Honorable Jeffrey S. White